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C O N F I D E N T I A L SECTION 01 OF 03 MANILA 005231

SIPDIS

STATE FOR EAP, EAP/MTS, EAP/MLS, L/EAP
PACOM ALSO FOR FPA HUSO

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TAGS: [PREL](#) [MARR](#) [ASEC](#) [PHUM](#) [PGOV](#) [PINS](#) [RP](#)

SUBJECT: LATEST DEVELOPMENTS IN ALLEGED RAPE CASE INVOLVING
US MARINES

REF: A. MANILA 5138

[1](#)B. COMPACFLT PEARL HARBOR HI 030112Z NOV 05

[1](#)C. OPREP-3/CTF 76.4/022000Z NOV 05 (NOTAL)

Classified By: A/DCM Scott Bellard for reasons
1.4(b) and (d).

[1](#)1. (U) This is an action request -- see para 6.

[1](#)2. (C) Summary: Acting Foreign Secretary Seguis delivered to Embassy on November 8 formal subpoenas for six US Marines allegedly involved in the rape of a Filipina in Olongapo City on November 1 (see text of Dip Note and DFA press release in paras 10-11). Both the GRP and the USG continue investigating the case under the mechanisms provided by the Visiting Forces Agreement (VFA). The Marines remain in US Embassy custody, although the GRP may soon request that it assume custody. Embassy requests guidance on how we should best respond to such an eventual request (see para 6). We continue to consult with Philippine Congressional and other leaders, and to reiterate our commitment to proceeding under the VFA, with the Marines in US custody but available for investigation and any judicial hearings. The GRP has continued to express its support for the VFA, but both the VFA and USG have received some sharp criticism from national and local politicians, as well as various activist groups. End Summary.

[1](#)3. (C) The Philippine Department of Justice, through the Olongapo City Prosecutor's Office, issued subpoenas on November 8 to US Marines Keith Silkwood, Daniel Smith, Albert Lara, Corey Burris, Chad Carpenter, and Dominic Duplantis, suspects in the alleged rape of a 22-year old Filipina in Olongapo City on November 1. The Olongapo City Prosecutor's Office received the complaint of rape against Silkwood, Smith, Lara, Burris, Carpenter, and one "John Doe" on November 3. (Note: The criminal complaint did not include Duplantis' name. It listed the other five marines plus a "John Doe" as the accused. End Note.) The Prosecutor's Office also on November 8 transmitted to the DOJ the subpoenas, which Acting Foreign Secretary Seguis then transmitted to A/DCM (copy faxed to EAP/MTS). According to the subpoenas, respondents must either personally appear or be represented by their counsel on November 23 and 29 for preliminary investigation hearings. A/DCM pledged full cooperation under the terms of the VFA.

[1](#)4. (C) VFA Commission Executive Secretary Zosimo Paredes separately told Poloff on November 7 that he would soon send to Foreign Secretary Romulo a recommendation that the GRP request custody of the Marines under the VFA provision that: "in extraordinary cases, the Philippine government shall present its position to the United States Government regarding custody, which the United States Government shall take into full account." He opined that the request would defuse political tensions surrounding the case.

[1](#)5. (C) A/DCM urged Acting Secretary Seguis that the Marines should remain in US custody. Both Acting Secretary Seguis and Chief Prosecutor Zuno confirmed that there was no request by the GRP for transfer of custody at this time. Zuno emphasized that the case remained only under investigation, with no charges filed. Should charges be filed later, judges would likely issue arrest warrants, at which time the GRP would consider invoking the relevant clause of the VFA for Philippine custody. A/DCM reiterated our preference for US custody but with all appropriate access to GRP authorities. Local media filmed the turnover of the subpoenas and later questioned A/DCM outside the Secretary's office. A/DCM reiterated full USG cooperation under the VFA, in accordance with the principle of presumption of innocence under US and Philippine law.

[1](#)6. (C) Action Request: Embassy would welcome guidance from EAP and L/EAP on how we should best respond to a formal request for transfer of custody under the VFA. End Action Request.

[1](#)7. (C) The six Marines are now detailed TDY to JUSMAG, under the responsibility of the Mission. They are currently in a JUSMAG residence. All are on now in the process of retaining

local counsel. The US Naval Criminal Investigation Service (NCIS) continues its parallel investigation into the case.

18. (SBU) The alleged rape has drawn considerable media attention locally. Embassy statements that we will cooperate with the GRP under the terms of the VFA have received wide and generally favorable coverage. The case has nonetheless also engendered sparsely-attended protests, largely from leftist and traditionally anti-American groups, who are calling for sole Philippine jurisdiction over the case and an end to the VFA. Contacts at the GRP's National Security Council confirmed that some groups plan to organize a "National Day of Protest" on November 10. Several senators have called for a re-evaluation of the VFA, and six legislators at the House of Representatives have stated that they will file a resolution calling for the abrogation of the VFA. Other national and local politicians have used the event as an opportunity to engage in broad criticism of the US. CDA and A/DCM continue to consult closely with the Senate and House Foreign Affairs Committee chairmen and other concerned politicians.

19. (C) The GRP continues to stand firmly behind the VFA. However, on the margins of USAID Assistant Administrator Kunder's November 8 call, President Gloria Macapagal Arroyo told CDA that the GRP would need to "see how this all develops," noting that "if this were just a driver being beaten up, that would be one thing, but this was a woman and we in the Philippines treat our women with respect."

110. (U) Text of Dip Note:

The Department of Foreign Affairs presents its compliments to the Embassy of the United States of America and wishes to refer to the primary right of the Philippines to exercise jurisdiction pursuant to paragraph 1(a) and paragraph 3(a), Article V of the Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines ("the Agreement") in relation to the complaints of rape filed against certain United States military personnel at the City Prosecution Office of Olongapo City.

The Department has the further honor to give formal notification, in accordance with paragraphs 4 and 7 of Article V of the Agreement, and in particular paragraph 6 of Article V of the Agreement, for the Embassy to make the respondents named in the attached Subpoenas issued by Olongapo City Prosecutor Prudencio B. Jalandoni dated 08 November 2005, available to the Office of the City Prosecution of Olongapo City on the time and dates specified in the Subpoenas for the preliminary investigation of the charges of rape.

The Department also wishes to point out to the portion of the Subpoenas that give the opportunity for the respondents to submit within the time allowed their counter-affidavits and other supporting documents to the City Prosecution Office of Olongapo City, furnishing copies to the complainant named in the Subpoena.

The Department also wishes to refer to the portion of the Subpoenas that state that failure to submit counter-affidavits within the time allowed will be deemed a waiver of the right to preliminary investigation and that the case shall be resolved on the basis of the evidence presented by the complainant.

The Department of Foreign Affairs avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Pasay City, 8 November, 2005

End Text.

111. (U) Text of Press Release from the Department of Foreign Affairs:

Statement of Acting Foreign Affairs Secretary Rafael E. Seguis on the formal notification requiring the presence of the accused US service at the preliminary investigation on charges of rape, 8 November 2005

The Department of Foreign Affairs today reiterated its primary right to exercise jurisdiction pursuant to paragraph 1(a) and paragraph 3(a), Article V of the Agreement Between the Government of the Republic of the Philippines and the Government of the United States of America Regarding the Treatment of United States Armed Forces Visiting the Philippines ("the Agreement") in relation to the complaints of rape filed against certain United States military personnel at the City Prosecution Office of Olongapo City.

In this connection, the Department gave formal notification

today, in accordance with paragraphs 4 and 7 of Article V of the Agreement, and in particular paragraph 6 of Article V of the Agreement, for the US Embassy to make the respondents named in the Subpoenas issued by Olongapo City Prosecutor Prudencio B. Jalandoni dated 08 November 2005, available to the Office of the City Prosecution Of Olongapo City on the time and dates specified in the Subpoenas for the preliminary investigation of the charges of rape.

The Department has received the assurance of the US Embassy of their full cooperation and compliance with their treaty commitments under the Agreement.

The Department will continue to work closely with the appropriate Philippine authorities to ensure that justice is served.

End Text.

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